



American Telecasting, Inc.

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April 9, 1998

The Honorable Michael K. Powell
Commissioner
Federal Communications Commission
1919 M Street, NW
Washington, DC 20554

Re: *Amendment of Parts 1, 21 and 74 to Enable Multipoint Distribution Service and Instructional Television Fixed Service Licensees To Engage in Fixed Two-Way Transmissions B MM Docket No. 97-217*

Dear Commissioner Powell:

I recently had the opportunity to read the text of your speech at the Legg Mason Investor Workshop. Speaking on behalf of a company that has spent more than a decade attempting to bring Commission-regulated communications services to the public, I found your comments on the changing role of regulators as technology evolves to be insightful and most welcome.

I could not help but notice that your four tenets of changed regulatory thinking mirror in many respects the philosophies underlying a series of proposals that American Telecasting, Inc. ("ATI") and over one hundred other participants in the wireless cable industry have been advancing in MM Docket No. 97-217. Like you, we have long been aware that with the advent of digital technology, traditional market barriers will inevitably crumble. Indeed, following on the heels of the Commission's 1996 decision permitting Multipoint Distribution Service ("MDS") and Instructional Television Fixed Service ("ITFS") licensees to deploy digital technology, ATI joined with three other wireless cable operators (People's Choice TV Corp., CAI Wireless Systems, Inc. and Pacific Telesis) and a leading wireless cable equipment manufacturer (ADC Telecommunications, Inc.) to craft a wireless cable regulatory regime that would promote the rapid introduction of a myriad of innovative digital services over the MDS/ITFS wireless cable spectrum allocation. Collectively, these companies have invested hundreds of thousands of dollars to prepare and prosecute the Petition for Rulemaking (RM-9060) filed with the Commission more than a year ago proposing amendments to Parts 21 and 74 that, if adopted, will promote the most efficient use of the MDS/ITFS allocation.

As we made clear in the Petition and in response to the Commission's resulting *Notice of Proposed Rulemaking* ("NPRM") of October 7, 1997 in MM Docket No. 97-217, our objective has been to provide MDS and ITFS licensees the flexibility that they will need in order to rapidly deploy

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digital technology in increasingly competitive markets. Although the Commission has always afforded MDS licensees the flexibility to provide any type of communications service, over the years the technical rules became oriented towards video distribution; adoption of our proposal will result in rules that apply regardless of whether the digital ones and zeros are ultimately converted to video, data or other applications.

At ATI, we are particularly excited about the prospects for utilizing our spectrum to meet the demand for high speed Internet access. During 1997, ATI launched a commercial high-speed Internet access service branded WantWEB. WantWEB is currently available in Colorado Springs and Denver, CO and Portland, OR, and ATI anticipates initiating service in Seattle, WA in the second or third quarter of 1998. The initial configuration of the system utilizes MDS spectrum for the wireless high-speed download from the Internet (present customers are being provided an average download data transfer rate of approximately 750 Kbps, 25 times faster than a 28.8 Kbps analog modem speed) and a telephone connection for the upstream data path. Initial consumer response has convinced us, however, that future versions of the service will have to use two-way wireless transmissions and eliminate the telephone connection completely in order to be viable over the long term. Although the Mass Media Bureau has granted permanent MDS two-way authorizations on an *ad hoc* basis under certain circumstances, the current MDS/ITFS regulatory structure does not yet provide a mechanism for the routine licensing of innovative digital wireless services like high-speed two-way Internet access. Adoption of the proposals advanced by ATI and the others will close that gap.

You recognized in your Legg Mason speech that a decision by the Commission that is right, but too late, might as well not have been made at all. This is particularly apt with respect to this proceeding, in two respects. First, time is of the essence for developing an MDS/ITFS regulatory environment that is conducive to investment. A cornerstone of ATI's corporate strategy is entering into a relationship with a strategic partner that facilitates access to service markets, communications networks and capital markets. Successfully deploying a business using wireless cable spectrum is capital intensive, and ATI will require substantial additional capital to build a successful business.

We believe as potential strategic partners fully evaluate the opportunities in wireless services and the related radio frequency spectrum alternatives, one or more may conclude that the MDS/ITFS spectrum offer an attractive partnership and investment opportunity. That will not occur, however, until rules permitting routine flexible use of the spectrum allocation are in place. And, if those rules are not in place soon, investors will inevitably migrate to other wireless bands that are more attractive from a licensing perspective (such as LMDS, WCS, GWCS, DEMS and 39 GHz). It is my hope that the Commission can act upon the *NPRM* early this summer, so that the Wireless Cable Association International's annual convention on July 8-10 can become a celebration of the beginning of a new era. The Mass Media Bureau has indicated that this timetable can be achieved,

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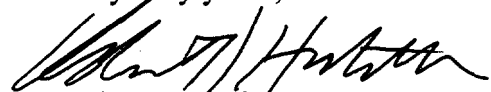
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and I would ask that you do whatever is in your power to promote that goal.

Adopting new rules quickly, however, will do little good unless those rules provide for the rapid deployment of two-way services. I have been active in the wireless cable industry for over ten years, and can personally attest to the significant harm ATI and others have suffered as a result of both MDS and ITFS licensing delays. Unless the Commission establishes a regulatory regime that permits the rapid deployment of two-way digital services over the MDS/ITFS wireless cable spectrum allocation without such delays, ATI and its brethren are doomed to failure. WantWEB will be competing in the marketplace against a host of wireless competitors (such as LMDS, WCS, GWCS, DEMS and 39 GHz) that have the ability to establish service to a given location upon demand, without regulatory delay. Licensees in those services will be able to respond to a prospective customer's request for service immediately; unless ATI can do the same, WantWEB will be a marketplace also-ran. To address this issue, the Petition for Rulemaking proposed a series of rule changes that would expedite MDS and ITFS licensing, while still assuring all licensees the level of interference protection they enjoy today. The general objective behind these proposed changes is to shift scarce staff resources from the pre-operation processing of uncontested applications to the enforcement of the Commission's interference rules through speedy resolution of contested situations. While these proposals are somewhat radical compared to the procedures usually employed by the Mass Media Bureau, they are based on rules that are being successfully applied by the Wireless Telecommunications Bureau to regulate our competitors. Unfortunately, the *NPRM* tentatively rejected our approach, and proposes retention of a *status quo* that virtually all commenting parties condemn. You have called for the end of regulatory compartmentalization under which functionally equivalent offerings are subject to different regulatory structures. Rationalizing the licensing rules for MDS/ITFS with those of LMDS, WCS, GWCS, DEMS, 39 GHz and the like would be a good starting point for that crusade.

I will be visiting the Commission over the next several weeks along with senior executives of the other companies that sponsored the preparation and prosecution of the Petition to meet with each of the Commissioners and their staffs to discuss the importance of MM Docket No. 97-217 to the future of the wireless cable industry. I look forward to meeting you at that time.

Very truly yours,



Robert Hostetler
President and CEO

cc: Jane Mago